

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JANUARY 22, 2013 – 6:00 P.M.
NEW CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Mayor Fred L. Fitch
Presiding

Also Present:
Bryan Long, Acting City Manager
Frank V. Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Paul Hossenlopp, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:01 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Greg Baxter, Faith Journey Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
Michael Tennis, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT: George Moses, Ward Five

PRESENTATION OF OUTSTANDING CITIZEN RECOGNITION TO DAISY PEREZ (THIS ITEM WAS STRICKEN FROM THE AGENDA)

AUDIENCE PARTICIPATION: None.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF DECEMBER 18, 2012.

MOVED by Tennis SECOND by Shoemate to approve the minutes of December 18, 2012. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

CONSENT AGENDA

Mayor Fitch stated item #10 needs to be discussed separately. Wells requested item #6 be considered separately.

MOVED by Burk SECOND by Shoemate to approve the consent agenda with the exception of items #6 and #10. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for denial: Southwestern Bell Telephone, d/b/a AT&T Oklahoma in the amount of \$509.92 and Nichole Dolan in the amount of \$150.00. Exhibits: Legal Opinions/Recommendations.
2. Consider approving an Outside Water Sales Contract with Lehman Perkaquanard, and authorize the Mayor and City Clerk to execute the Contract. Exhibits: Location Map. Contract is on file in the City Clerk's Office.
3. Consider approving contracts for 'Children's Art Studio', Spring 2013 semester for Steven Scott Smith (\$607.50), Kenneth Hobbs (\$502.50), Catherine Daugherty (\$247.50), and Kathleen Long (\$225.00) instructors for the program. Total amount for spring semester stipends is \$ 1,582.50. Exhibits: Contracts on file in City Clerk's office.
4. Consider approving plans and specifications for the Lawton City Offices – Sidewalk Rehabilitation (New City Hall) Project #2013-01 and authorizing staff to advertise for bids. Exhibits: Plans and specifications are on file in the Engineering Division office.
5. Consider approving a lease agreement between the Armed Services YMCA for use of the Army Reserve Center as a facility to be used for the improvement of the lives of U.S. Service men and women and their families through programs and services that promote their welfare. Exhibits: Contract between the City of Lawton and the Armed Services YMCA.
6. Consider approving Council Policy No. 3-2, City of Lawton General Employee Injury Prevention Program, by amending definitions, eligibility requirements, employee risk levels, guidelines of disciplinary action and redefining the Safety Incentive Awards. Establish an effective date of March 12, 2013. Exhibits: Amended City Council Policy No. 3-2, City of Lawton General Employee Injury Prevention Program.

Wells questioned why we had the inability to continue the savings bond program.

Jim Russell, Human Resources Director, stated the banks no longer provide paper savings bonds. Everything has to be done electronically and we are not able to do that for our employees.

Wells questioned if the awards will be the same as they were before.

Russell stated the awards are restructured. If we bought a \$500 savings bond, we are not paying \$500, we are paying \$250 and it matured over the length of the bond. We just fiscally cannot provide \$500 to the employees so they scaled back and revised the entire award system.

Wells questioned if they were going to continue to pay the \$250.

Russell stated they restructured the tenure and the entire program, they didn't just scale back to the \$250. Anyone over five years gets the same award and anyone under five years gets the same award.

Wells questioned what the awards would be.

Russell stated everyone over five years would receive \$100 and they also increased the number of days off. They increased the days off voucher to offset what was spent on the \$250 savings bond.

Wells questioned if the unions agreed to the changes.

Russell stated this does not affect the police and fire. It is only the general employees and the Employee Action Committee (EAC) has been working on this for the past nine months.

Wells questioned if the police and fire had a safety program.

Russell stated no. He stated these changes have the endorsement of the EAC.

Wells stated in talking to some of them, the reason they agreed to this is because you cannot buy bonds anymore, not that they necessarily agreed with the amounts of money. He stated they already give a new employee approximately five weeks off after one year and now you are going to give them additional days off. A lot of people end up losing time because they can't take all the days or they max out. When he voted on the union a couple years ago he didn't want to see the general employees taken advantage of and used as guinea pigs for unions.

Russell stated when they looked at this fiscally they only had a limited amount of money in the budget for these bonds. They had to make sure they covered everybody. The EAC is actually the one who came back and asked for the additional day.

Wells stated he would rather see us give them what the bond used to cost rather than additional days because most people get more days than they can use.

Russell stated the problem with giving them the \$250 is that is taxable income. The \$100 we are giving them is less of a tax impact on them.

Wells suggested this item be tabled and discussed further. He feels the council needs to understand what we are doing here.

Bellino-Hall questioned what they were trying to do here.

Wells stated they want to give \$100 and more days off. They used to get savings bonds.

Russell stated for those employees over five years it was \$100 savings bond and over ten years it was \$500 savings bond. Now they lowered that to five years and everyone gets the \$100 and the

EAC requested an additional day off as part of the award. They went from one day safety incentive award to a two day certificate. They do not have to take those days consecutively.

Bellino-Hall stated they would just be adding more days to what they already get.

Wells stated the first year at the city you get 80 hours of vacation, 96 hours of sick leave, 40 hours of flex, and now we are adding more days off. Now we cannot do bonds because the banks have gone to electronic bonds. He is suggesting they just give them the \$250 and no more days off.

Bellino-Hall stated that is a lot of time off.

Russell stated that the member of the EAC requested the days off after they polled their members.

Wells stated the only reason they agreed was because the savings bonds were being done away with.

MOVED by Wells SECOND by Zarle to table. AYE: Shoemate, Tennis, Bellino-Hall, Zarle, Haywood, Wells. NAY: Burk. MOTION CARRIED.

7. Consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, pertaining to Chapter 12, Food and Food Establishments, by repealing Article A-12-2 Milk and Milk Products. Exhibits: **Resolution No. 13-06**.
8. Consider depositing the reimbursements received from the Oklahoma Department of Transportation for transportation planning and Congestion Mitigation and Air Quality planning for FY 2012, into the City of Lawton Bicycle and Pedestrian Improvement Project account. Exhibits: Lawton Bicycle and Pedestrian Plan Phase II and III Route Map.
9. Consider granting an extension of time for the letter of credit for the Replat of Lot 3, Block 1, Bilbrey's East Plaza, Part One. Exhibits: Request from the Developer.
10. Consider approving the record plat for Dove Creek Addition, Part 4B, and accepting the improvements, maintenance bonds and easements outside the platted area. Exhibits: Plat Map. Maintenance Bonds and Easements are on file in City Clerk's Office.

Richard Rogalski, Community Services Director, stated the developer was not able to complete all the minor deficiencies he had and staff is recommending approval of the record plat for Dove Creek Addition, Part 4B and acceptance of the improvements, maintenance bonds and easements outside the platted area and a minor complete improvements escrow in the amount of \$625. He stated very little needs to be done.

MOVED by Burk SECOND by Tennis to approve the record plat for Dove Creek Addition, Part 4B, and acceptance of the improvements, maintenance bonds and easements outside the platted

area and a minor complete improvements escrow in the amount of \$625. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

11. Consider awarding a contract to Pinnacle Consulting Management Group, Inc. for the acquisitions services of Right of Way for construction of Project No. 2006-12, SE 45th Street Reconstruction (from south of Lee to north of Gore), ODOT Project STP 116B(137)UR, J/P 23410(04). Exhibits: Letter from Pinnacle Consulting Management Group, Inc. The Agreement for Property Acquisition and Relocations Services is on file in the City Clerks Office.
12. Consider accepting a temporary easement from Glenn Oil Company LLC for right of way needed for the SW 2nd Street Enhancement Phase IV Project #2011-4, authorizing the Mayor and City Clerk to execute the document. Exhibits: Temporary easement is on file in the City Clerk's office.
13. Consider accepting a permanent easement from Commissioners of the Land Office for right of way needed for the Flower Mound Sewer Line Upgrade Project #2012-5, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
14. Consider adopting a resolution and authorizing the Mayor and City Clerk to execute a project agreement for street improvements previously programmed by the City and designated as Federal Aid Project STP-116B(137), State Job Number 23410(04) which consists of Grade-Drain-Surface-Traffic Signals for SE 45th Street from Lee Blvd to Gore Blvd. Exhibits: **Resolution 13-07**. Project Agreement is on file in the City Clerk's office.
15. Consider adopting a resolution and authorizing the Mayor and City Clerk to execute a Right of Way, Public Utility and Encroachment Agreement as associated with street improvements previously programmed by the City and designated as Federal Aid Project STP-116B(137), State Job Number 23410(04) which consists of Grade-Drain-Surface-Traffic Signals for SE 45th Street from Lee Blvd to Gore Blvd. Exhibits: **Resolution 13-08**. Right of Way, Public Utility and Encroachment Agreement is on file in the City Clerk's office.
16. Consider adopting Street Light Resolution No. 481 to authorize the installation/removal of street lights at the location listed in the Resolution. Exhibits: Street Light Resolution No. 481
17. Consider extending contract (CL12-023) Mowing & Litter Areas West Lee Blvd from 67th St. to ½ mile West of 112th St.; Right of Ways East & West with The Lawn Wizards of Lawton, OK. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

18. Consider extending contract (CL12-023) Mowing & Litter Areas Hwy 62 from 46th St. to Rogers Lane Bypass; Right of Ways Central with Teen Challenge of Cache, OK. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
19. Consider approving contract extension for one (1) month (RFPCL10-020) HDW/SFW Support Agreement to Atlantic Tech Services of Richfield, OH. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
20. Consider awarding (CL13-021) 48” & 54” Closed Profile PS 46, PVC Pipe to HD Supply of Owasso, OK. Exhibits: Department recommendation, abstract of bids, price sheet, letter from the Fortiline.
21. Consider awarding (CL13-018) Track Mounted Manhole Rehab Machine to Quadex, Inc. of North Little Rock, AR. Exhibits: Department recommendation, abstract of bids, price sheet.
22. Consider approval of payroll for the period of January 7-20, 2013.

NEW BUSINESS ITEMS:

23. Hold a public hearing and consider approving an ordinance closing the alley in Block 28, McClung Addition located between SW 8th and SW 9th Streets and SW Garfield and SW McKinley Avenues. Exhibits: Ordinance No. 13-___, Location Map and Application.

Rogalski stated an Application for Closing of Public Way or Easement has been submitted by the Comanche Nation to close the alley in Block 28, McClung Addition which is bordered by SW 8th Street, SW 9th Street, SW Garfield Avenue, and SW McKinley Avenue. In 1953 Will Rogers Elementary was built here on top of the easements and it was not a problem until recently when they discovered that the alley was never officially closed. The Comanche Nation College is located in this block. There are no public improvements within the platted alley.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Haywood, SECOND by Shoemate to adopt **Ordinance 13-07**, waive the reading of the ordinance, read the title only. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-07

An ordinance closing the 20-foot alley in block 28, McClung Addition, located between SW 8th and SW 9th Streets and SW Garfield and SW McKinley Avenues.

24. Hold a public hearing and consider approving an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to C-4 (Tourist Commercial District) zoning classification located at 1804 NW 67th Street. Exhibits: Ordinance No. 13-___, Site Plan, Location Map, Application, Draft CPC Minutes and Petition with Map.

Rogalski stated this request is for a 100 foot by 200 foot portion of Lot 3, Block 1, Fire View

Addition. The property owner, Steve Livingston, has submitted a replat to subdivide Lot 3 into three lots. At this time the property owner is unsure how the remainder of the lot will be developed. The purpose of the rezoning request is for construction of an indoor archery range and store. The 2030 Land Use Plan designates this tract as Commercial. The site plan submitted now has an access isle which is splitting the parking spaces. This is a binding site plan and the uses for the binding site plan are written on there. In this case the applicant has actually reduced his uses to just those uses within the C-1 district.

On January 10, 2013, the City Planning Commission held a public hearing on this request. During the public hearing one person spoke for the request and three persons spoke against the request. A petition against the request was submitted and is attached along with a map showing the properties represented in the petition. The petition was signed by 35 residents representing 8.2 percent of the property within 300 feet of the requested area. The CPC, by a vote of 7 to 0, recommended denial of the request for the following reasons:

1. If C-4 zoning is granted to this portion of Lot 3, the property owner will request the rest of the lot to be C-4 as well as the tract between Lot 3 and the residential development to the south.
2. Some uses allowed in C-4 are fairly obnoxious.
3. Concerns that even though uses can be restricted on the binding site plan, the restrictions may not be enforced in the future.
4. The site plan had changed according to the applicant (location of driveway and parking spaces), yet a revised site plan had not been submitted for review.
5. C-1 zoning may be more appropriate for this area.

Notice of public hearing was mailed on December 20, 2012, to 18 owners of property within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on December 26, 2012.

Burk questioned if staff recommended that they go to C-4 because we don't have a category for an archery range.

Rogalski stated yes. The closest thing they could find to an archery range was a recreation center which was a C-4 use. The CPC did ask staff to add the archery range use within the C-1 district. To change the code would take two public hearings and it would take some time for CPC and Council.

Burk stated he would like to see them zone this C-1.

Rogalski stated when the request comes in for C-4 zoning the City Council can award a more restrictive zoning.

Burk stated they could give them C-1 zoning.

Shoemate questioned the zoning of the archery range by Atwoods.

Rogalski stated he believes it is C-5. That is the same business that is moving into this new location.

Wells stated they can't include archery into C-1 because there has to be a public hearing.

Rogalski stated it would be some time before that could happen. The notices for a code change are shorter than a notice for a rezoning. It would still be a benefit to the property owner to have this zoned C-1.

Burk stated once this is zoned C-1 and we have started the process to include this in C-1 zoning they could start moving forward with the process.

Zarle stated he understands that this organization is selling guns.

Rogalski stated part of this change would be to provide a definition for what an archery range would be and that would be part of the allowance. Retail sales are allowed in C-1, so they could sell the equipment already, but they could shoot with the archery equipment. Gun shooting ranges are only allowed in industrial area.

Mayor Fitch stated he could sell guns there, but they could not shoot them off. He stated the big problem with the people involved is that this request is for C-4, they don't have a problem with C-1. Staff can change C-1 zoning to allow archery. Tonight the council can pass C-1 zoning for that property. He stated they need to make this as simple as possible.

PUBLIC HEARING OPENED.

Chris Meyers, 2502 Creek Hollar, stated he is speaking on behalf of 35 homeowners in the immediate area. The notice the homeowners received stated the proposal was to change this piece of property to C-4. They have received no notice about a change to C-1 and he feels it would be inappropriate to change the zoning to anything other than C-4 because the notice said this would be either C-4 or residential. The homeowners object to the C-4 as did the CPC. He suggested they go through the normal procedures to change the zoning.

Mayor Fitch stated the council can go from a C-4 to a C-1. They can make the requirements tighter, but they could not go from a C-1 to a C-4. He has several emails from people who are fine with the C-1 zoning. This is a commercial business and it is along a commercial avenue and it is within the realm of the council to accept the C-1 zoning tonight and allow Mr. Livingston to go ahead and proceed with his plans. The building is in route and there is a short timeline on the current business on 53rd Street because his lease will be terminated in March.

Mr. Meyers stated the local homeowners he represents are opposed to this.

Steve Livingston, applicant, stated Ms. Barnes, one of the primary pushers of the petition, has sent out a letter to all the residents saying she was not opposed to this type of business. She did list the reasons why she did not want C-4 zoning. The owners of the archery business have been in their current location for twelve years and their lease expires in March. This does not give

them much time to put the building up. He stated there are over 200 children in this area that shoot bows and arrows as a participant in this sport at their school. He stated these students can go to Archery Corner and shoot for free, there is no charge to children who are on a team. If they cannot get this building up they will not have a safe place to shoot. He stated they want C-1 zoning. He stated he went to six homes closest to the property and five signed their name and address and were not opposed to C-1 zoning.

Dennis Woommavovah, 6702 NW West Air Circle, stated he lives just outside the 300 foot notification area. He is opposed to the C-4 zoning but not the C-1 zoning. The plans show a shared driveway outside the rezoned area which means they would use a residential zoned commercial driveway. There is also parking on the south side of the building that will back into residential. The plans have to include parking on your own property and this parking is on the property, but the maneuvering is on R-1 property. That could be a violation of the R-1 zoning code. He is not against the use, but it needs to conform with current codes.

Rogalski stated a parking lot associated with a commercial use is listed as a R-3 zoning use. In this case it is not a parking lot associated with a commercial use, what we have is a shared driveway. Staff felt that a share driveway was a benefit to both parties. The parking is not located on the R-1 space and you have a shared access agreement. This would be no different than two neighbors sharing a long driveway. It is staff's determination that this is not a zoning violation. He stated he would like to correct something he said earlier about the sale of guns and bows. That would not be allowed in C-1 on its own. Retail sales are allowed in C-1, however the specific use of sporting goods stores is listed as a C-4 use. However, if you define an archery range as being allowed to have some retail space, then that use would be allowed. That will go back to the code change issue.

Tenis stated he feels that the residents who are not for the C-4 zoning need to have their due process.

Wells stated in the CPC minutes Mr. Denham had made a motion to approve the C-4 zoning and Mr. Jones made a substitute motion to deny changing it to C-4, with no mention of C-1 zoning. In the minutes Rogalski stated that the term "archery range" is not in code so staff decided it would fall under the description of the recreation center. The applicant does not have to wait six months if they apply for a more restrictive zoning classification. The commission could table the issue until code is changed and Mr. Livingston can amend his application for C-1. There would be a fifteen day public notice required for the code change. This leads the residents to think that they have fifteen days to think about it and now all the sudden Mr. Rogalski is saying that the council can change it tonight from C-4 to C-1 because it is more restrictive. That is not what they said at the meeting. It passed 7-0 to deny C-4 zoning.

Rogalski stated the fifteen day notice is to change code. The CPC, while they said they felt C-1 was appropriate, they did not want to recommend C-1, they chose to deny the request of C-4.

Wells stated Mr. Rogalski's comments to CPC were that it would take at least a fifteen day public hearing notice, which would indicate that it had to go back to a public hearing, but now we are saying the city council can change it.

Rogalski stated they were talking about two things, to change the zoning and change the code. The fifteen day notice is the requirement to change the code and that hasn't started yet. After they draft the code they post a public notice and then have public hearing before CPC and city council. If this zoning is denied, they are required to give another twenty day notice to reapply for C-1 and then they would mail the notice to those within 300 feet. Proper notice was given for C-4 zoning and the state statute does allow the council to approve what was given notice to or a more restrictive zone.

Mr. Livingston stated in those minutes it shows that they also suggested he withdraw his application but said that he had the right to go before the city council and seek C-1 zoning. He declined to withdraw his application and said he would go to council, which gave notice to those that were in attendance at the CPC meeting. All those people are in attendance tonight. He stated this property will eventually be zoned C-1.

Haywood questioned if Mr. Meyers had a problem with C-1 zoning.

Mr. Meyers stated he cannot give an answer as to how the homeowners would respond. He stated they were not asked their opinion on C-1 zoning. They did not want C-4 zoning and the CPC said it should not be C-4. That is really what is before the council tonight.

Wells stated agrees that it will eventually go C-1, but he feels they are being rushed into something because you are talking about a business closing. If their lease is up the 31st of January, there is no way they are going to get a building up in the next nine days. They are going to close whether or not this is changed to C-1 or not.

Mr. Livingston stated the building is already ordered and on its way and it takes about sixty days to build it.

Wells stated they will be closed for some period.

Mr. Livingston stated maybe a week or two. He stated they close on the 31st of March.

Mayor Fitch stated if they change it to C-1 tonight there is a gamble there by Mr. Livingston in building the building before they change the code to allow archery ranges in C-1. He is willing to take that gamble because the building has been ordered. He would hate to go through a timely process tying up staff time when it is inevitable that this will be allowed in C-1. He stated it looks at though most of the surrounding residents are okay with C-1 zoning.

Bellino-Hall stated this will be C-1 eventually. She knows the people that have this archery program and we are always complaining that there is nothing for kids to do in this town, so they need to just move this forward.

Zarle questioned if it would be too late to bring it back in two weeks.

Mr. Livingston stated they have been working on this for four months and they really need to get this done tonight.

Zarle stated he agrees with Councilmember Bellino-Hall and he has no problem with C-1.

Mayor Fitch stated it is within the realm of the council to recommend C-1.

Erica Barnes, 6703 NW West Air, stated the property is 300 feet from her back yard. She stated they take pride in their home, but through the years they have had flooding due to construction around their home. She is concerned there will be more traffic and more crime. There are also concerned with blowing trash.

Matt Camping, 2307 NW Denver, stated he is a new member to the archery community. He stated you cannot find archery supplies at Walmart. He stated archery is a way to provide for your family and this business provides knowledge as well as gear. This business will draw quality customers and the crime factor is not an issue.

Debra Anderson, 6706 NW West Air Circle, distributed photos of the trash problem they have been dealing with for years from Laugh Out Loud and Walmart. They have also had a battle with rats because of the property to the south of Mr. Livingston's. There are piles of debris there and rats come into the neighborhood. She knows this will become commercial property and she would prefer C-1 rather than C-4.

PUBLIC HEARING CLOSED.

MOVED by Zarle, SECOND by Bellino-Hall to approve an ordinance changing the zoning from R-1 to C-1 zoning classification located at 1804 NW 67th Street in accordance with the binding site plan. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-08

An ordinance changing the zoning classification from the existing classification of R-1 (Single-Family Dwelling District) to C-1 (Local Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

Bellino-Hall stated she is confident that the owners of this property will keep the trash picked up.

Burk stated that he will get some LETA volunteers out to clean up the brush piles.

25. Consider accepting the traffic signalization on East Gore Boulevard at the Fort Sill Apache Casino located at 2401 East Gore Boulevard and also consider a request from the developer to waive the maintenance bond and engineering inspection fee. Exhibits: Location Map.

Rogalski stated this is a request for acceptance of the signalization that was put in on East Gore Boulevard at the Fort Sill Apache Casino and hotel project. All the minor inconsistencies and all the corrections have been made. Staff is recommending acceptance of the traffic signal on East Gore conditioned upon the submittal of a maintenance bond within fifteen days. Staff is recommending waiving the inspection fees. Fort Sill Apache Casino has requested us to waive the maintenance bond and the inspection fees. Staff has spoken with the attorney for Fort Sill Apache Casino and they are in agreement with the compromise of waiving the inspection fees and collecting the maintenance bond.

Burk stated they just have a temporary CO for this and this is what is holding them up to get permanent occupancy for the hotel. He stated they have agreed to do the repairs he has asked for on Gore Boulevard and they are also looking at a deceleration lane for the entrance to the casino and also doing something in the medians and also a location for a bus stop. He would like to approve this and waive the fee and maintenance bond.

MOVED by Burk, SECOND by Zarle to accept the traffic signalization on East Gore Boulevard at the Fort Sill Apache Casino located at 2401 East Gore Boulevard and approve a request from the developer to waive the maintenance bond and engineering inspection fee. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

26. Consider awarding contract (RFPCL13-027) for the removal of hazardous and diseased tree services and to allow for the City Manager to withdraw from the Emergency Management Stabilization Fund an amount equal to the awarded contract. Exhibits: RFPCL 13-027. Bid Tabulation Sheet – Not available until Council Meeting.

Mayor Fitch stated the bid opening was this morning and the tabulation results were distributed to council.

Long stated there were thirteen companies that submitted sealed bids. One was disqualified due to a clerical issue. He stated staff is recommending that Arbor Masters Tree Service be awarded the contract at a total cost of \$113,120. Staff is also recommending that we award this same contract to Browns Tree Service.

Burk questioned if Browns Tree Service agreed to the same funding amount.

Long stated yes.

Wells stated the number one on the list is S&W Services.

Long stated they were disqualified.

Wells stated they are setting a terrible precedence by doing this. He stated 100,000 citizens paid sales tax and utility service fees for us to have that money in an emergency fund. Now we are going to take that money out of there and we are going to make an exception for about 250 homeowners and pay for things on private property. In the City Attorneys opinion he did not

recommend we do that even though they legally could. He stated state law provides that we can handle this through the abatement process. He feels they are making a terrible mistake in doing this with emergency fund money.

Mayor questioned if they were going to split this up.

Rogalski stated the contract will allow them to split this up and both bidders are aware of this and have agreed to the numbers. They will each do about \$55,000 - \$56,000 worth of work.

Mayor Fitch clarified that we are not going to be out more than \$113,120.

Haywood stated he would like to have a breakdown of how many trees will be taken down in each ward.

Zarle stated he hopes this is not a starting point to start using this as a slush fund.

Rogalski stated the council also received a draft of a notice letter that will be sent out. Prior to any work being done or any work orders being issued, the legal property owner, who has a tree that is in the right of way, will be sent this letter in which case they have ten days to ask questions. Staff will come out and discuss with them which tree has been identified. They can also appeal this and it will be taken off the work order list and someone will come out and do an evaluation. We are not going to just go out and start knocking trees down tomorrow.

Burk stated the person they will work with is Mark Bay, who is the urban forester for the State of Oklahoma. He will come here at no cost to us and evaluate those trees.

Haywood questioned if they were going to take them to a certain location.

Burk stated the contractor will remove the trees and they will stump grind eight inches below the ground and then they will make it level.

Wells stated according to the legal opinion, if the citizen does not agree to having the tree cut down, they can go to court. He suspects we will get some lawsuits out of this.

Jensen stated we still have to use the notice process and they have a right to appeal our determination that their tree is dead, diseased or hazardous.

Wells stated if they appeal and the council agrees to take it down, they can file a lawsuit against us and if the court doesn't agree the city can be held liable.

Jensen stated that is correct. They could file a small claims suit or they could file a suit before a district judge.

Burk stated they will do this properly and give notice.

Haywood questioned if they were giving the homeowner ten days.

Tony Griffith, Neighborhood Services Supervisor, stated they will give them ten days to file an appeal. Once they file that appeal they will pull it off the “take down” list and go through the process.

Burk thanked staff for all the work done on this issue.

MOVED by Burk, SECOND by Tennis to award contract (RFPCL13-027) for the removal of hazardous and diseased tree services to Arbor Masters Tree Service and Browns Tree Service and to allow for the City Manager to withdraw from the Emergency Management Stabilization Fund an amount equal to the awarded contract. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood. NAY: Zarle, Wells. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Mayor Fitch stated the Mayor’s Youth Summit will be held on February 6th from 11:00 a.m. to 2:30 p.m. at Cameron University. He stated they will take all the data from this summit and look at what they can do to better this community. He stated in the five essay contest winners, three of them recommended sales tax and utility rate increases to pay for things within the city.

The Mayor and Council convened in executive session at 7:31 p.m. and reconvened in regular, open session at 8:19 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

27. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claim of Jerry Ann Short and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 27. No action was taken.

28. Pursuant to Section 307B3, B4 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to (1) economic development, including the purchase/transfer of property, incentive proposals, and financing in connection with the Lawton Downtown Redevelopment Project and other development projects under consideration in the City, (2) a pending action with AEP/PSO regarding responsibility for electric utility relocation costs in connection with the Lawton Downtown Redevelopment Project, and take appropriate action in open session as necessary. Exhibits: None.

Jensen read the title of item 28.

MOVED by Wells, SECOND by Haywood to authorize the City Attorney and Mayor to finalize negotiations and the details of a cost sharing agreement with AEP/PSO as generally outlined in the City Attorney’s letter of January 18, 2013 including acceptance of PSO’s offer to pay 32% or \$1.6 million, whichever is less of the total cost of the electric utility relocation being undertaken in connection with the Lawton Downtown Redevelopment project and authorize the Mayor to

execute the agreement. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells.
NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:21 p.m. upon motion,
second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK